IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8034 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RANGAKUI DUDH UTPADAK SAHKARI MANDALI LTD

Versus

DISTRICT REGISTRAR

Appearance:

1. Special Civil Application No. 8034 of 1999

MR HM PARIKH for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1

MR SUBRAMANIAM IYER for Respondent No. 2-7

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 30/04/2004

ORAL JUDGEMENT

1. The petitioner has preferred this petition under

Articles 226 and 227 of the Constitution of India and thereby challenges the order passed by the authorities below namely (i) the District Registrar, Cooperative Societies, Mehsana, (ii) the Additional Registrar (Appeals), Cooperative Societies, Gandhinagar and (iii) the order passed by the Deputy Secretary (Appeals), Agriculture and Cooperation Department, Gandhinagar.

2. Learned advocate appearing for the petitioner submits that the land which has been allotted to the petitioner society has been encroached upon by the respondents no. 2 to 7 and therefore the resolution was passed on 25th July, 1996 for dismissing the said members from membership of the petitioner society. The said resolution is at Annexure-A to the memo of the petition.

3. Learned advocate for the petitioner submits that the said resolution of the petitioner society was not approved by the District Registrar, Cooperative Societies, Mehsana u/s 36 of the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as "the Act 1961) by its order dated 25th November 1997. Against the said order the Appeal No. 181 of 1999 was preferred u/s 153 of the Act, 1961 before the Additional Registrar (Appeals), Gujarat Cooperative Societies, State of Gujarat, Gandhinagar, who dismissed the said appeal as there was delay of more than six months in preferring the appeal. The appellate order is placed on record at Annexure-C to the memo of the petition. Reason for delay referred to in the Appellate Authority's order dated 31st January, 1999 is that because of intervention of respected persons of the village, talk of settlement was going on and therefore the appeal could not be preferred within the period of limitation by the petitioner society and therefore delay was caused. None the less, delay was not condoned and without condoning the delay, the appeal was dismissed by the order dated 30th January, 1999 by the Additional Registrar (Appeals), against which Revision Application No.45 of 1999 was preferred by the petitioner society u/s 115 of the Act 1961 before the Deputy Secretary (Appeals), Agriculture and Cooperation Department, Gujarat State, who also dismissed the said revision application by the order dated 20th July, 1999. In the said revisional order, the order of the Appellate Authority of not condoning the delay and dismissing the appeal was accepted and in the last paragraph some merits of the case was also discussed.

4. It is contended by the learned advocate for the petitioner that there were cogent and convincing reasons for condoning the delay while preferring the appeal

before the Additional Registrar (Appeals) u/s 115 of the Act, 1961 and it was not justified for the Appellate Authority to dismiss the appeal by not condoning the delay. The petitioner society is acting bonafidely against the encroachers and the right of appeal cannot be taken away by not condoning the delay despite existence of reasonable reasons and the opportunity of being heard was not given and the principles of natural justices are violated by the Appellate Authority and therefore the orders of the Appellate Authority passed u/s 115 of the Act, 1961 deserves to be quashed and subsequently revisional order passed u/s 155 of the Act also deserves to be quashed and the matter may be kindly remanded to the Appellate Authority, with time bound schedule.

5. Learned advocate appearing for the respondents no. 2 to 7 has contended that the appeal was not preferred by the petitioner society u/s 115 of the Act, within the time limit of 60 days and therefore the appeal was rightly dismissed by the Additional Registrar (Appeals). The revisional authority i.e. the Deputy Secretary (Appeals) has decided the Revision Application on merits as per the last paragraph of that order dated 20th July, 1999 and therefore they do not require to be quashed and the petition deserves to be dismissed.

6. I have gone through the facts and circumstances of the case and the orders passed by the authorities below. It is evident that the petitioner society removed its members who are the present respondents no. 2 to 7 because of encroachment made by them upon the land given to the petitioner society. The appeal was preferred at belated stage because "some talk of settlement was going on". The delay ought to have been condoned by the Appellate Authority as per the principles enunciated by the Hon'ble Supreme Court in several judgments and it is a well settled that while condoning the delay, liberal view and approach has to be taken by the adjudicating authority. The reason for the delay on the part of the petitioner society in preferring the appeal before the Additional Registrar (Appeals) u/s 153 of the Act, 1961 was justifiable and while exercising the powers vested under Article 226 and 227 of the Constitution of India, I am of the view that when the principles of natural justice are violated, the impugned orders deserve to be quashed. Adequate opportunity of hearing on merits ought to have been given by condoning the delay by the Appellate Authority. I, therefore, quash the order dated 30th January, 1999 passed by the Additional Registrar (Appeals) in Appeal No.188 of 1999 and similarly the revisional order dated 20th July, 1999 passed by the

Deputy Secretary (Appeals), Agriculture and Cooperation Department, Gujarat State, in Revision Application No. 45 of 1999 also deserves to be quashed. The Revisional Authority ought to have remanded the matter to the Appellate Authority and therefore it has committed the grave error in law and therefore the said revisional order dated 20th July, 1999 is also hereby quashed and the matter is now remanded to the Additional Registrar (Appeals), Cooperative Societies, Gujarat State, Gandhinagar for taking appropriate decision in accordance with law on the merits of the case within a period of three months from the date of receipt of writ of this Court.

7. In view of the above, this petition is partly allowed. Rule is made absolute to the aforesaid extent, with no order as to costs.

(D.N. Patel, J.)

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